



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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OAG 17-031

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Subject: Whether proposed changes to the Cost of Living Adjustment formula in the proposed pension bill would violate the provisions of KRS 161.714, which establishes the "inviolable contract" between the Commonwealth and its public school teachers.

Requested by: Representative James L. Kay II

Syllabus: Under Kentucky law, the proposed changes to the Cost of Living Adjustment formula in the proposed pension bill would violate the provisions of KRS 161.714, which establishes the "inviolable contract" between the Commonwealth and its public school teachers.

Statutes construed: KRS 161.620; KRS 161.74

Opinion of the Attorney General

Representative James L. Kay II has requested an opinion from this office addressing the following question:

Would members of the Kentucky General Assembly, acting in their official capacities, be acting contrary to the provisions of KRS 161.714 and/or other applicable provisions of Kentucky law if they voted to approve that portion of Governor Bevin's pension reform plan which suspends the 1.5% cost of living allowance mandated by KRS 161.620(2) for current retired teachers for the next five (5) years commencing July 1, 2018 and which suspends the rights of

future retired teachers to that allowance for the first five (5) years of their retirement?

Under Kentucky law, the proposed changes to the Cost of Living Adjustment ("COLA") formula in the proposed pension bill would violate the provisions of KRS 161.714, which establishes the "inviolable contract" between the Commonwealth and its public school teachers.

Kentucky and its public school teachers are parties to an "inviolable contract," pursuant to which Kentucky has promised retirement benefits to current and retired teachers in consideration for their service. Specifically, KRS 161.714 provides that the benefits conferred in certain sections of the statutes establishing the Kentucky Teachers Retirement System ("KTRS") may not be reduced or impaired:

It is hereby declared that in consideration of the contributions by members and in further consideration of benefits received by the state from the member's employment, *KRS 161.220 to 161.710 shall constitute, except as provided in KRS 6.696, an inviolable contract of the Commonwealth, and the benefits provided herein shall, except as provided in KRS 6.696, not be subject to reduction or impairment by alteration, amendment, or repeal.*

(emphasis added).¹ Under Kentucky law, reduction or impairment of the benefits provided between KRS 161.220 and 161.710 therefore violates the inviolable contract.

The current COLA provision is set forth in KRS 161.620(2). KRS 161.620(2) states:

Effective July 1, 2002, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option shall be increased in the amount of one and one-half percent (1.5%), provided the retired member had been retired for at least the full twelve (12) months immediately preceding the

¹ KRS 6.696 is not relevant here, as it provides that legislators convicted of felonies relating to their duties as legislators forfeit their rights to pension benefits.

date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase.

The provision for a 1.5% COLA increase has been in effect since July 1, 1990, with only one amendment in 2002 to provide for the pro rata COLA increase for those who have been retired less than one year. See 2002 Ky. Acts Ch. 275, § 278; 1990 Ky. Acts Ch. 442, § 16.

Indisputably, KRS 161.620 is within the range of statutes that make up the "inviolable contract." The benefits it confers therefore cannot be reduced or impaired "by alteration, amendment, or repeal."

The proposed pension bill explicitly amends (and alters, if not repeals and alters) KRS 161.620(2). It specifically alters it as follows:

(a) Effective July 1, 2018 [2002], and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option shall be increased in the amount of one and one-half percent (1.5%), provided the retired member had been retired for at least *five (5) years, except as provided by paragraph (b) of this subsection* [the full twelve (12) months] immediately preceding the date that the increase is effective. [In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase.]

(b) For retired members and beneficiaries receiving benefits based upon a retirement date prior to July 1, 2018, the increase in retirement allowance provided by paragraph (a) of this subsection that is awarded annually on July 1 of each year shall not be provided

for July 1, 2018, July 1, 2019, July 1, 2020, July 1, 2021, and July 1, 2022.

177 SS BR 10, § 130(2).

Thus, the proposed pension bill changes the current statutory arrangement by suspending the existing 1.5% COLA increase for a five-year period, until 2023, for all current retirees. In addition, it prevents all future retirees from receiving COLA increases for five years following their retirement, whereas the previous statute provided for all retirees to receive COLA increases, with those who had been retired for less than a year receiving pro rata COLA increases.

The proposed plan therefore reduces or impairs the benefits promised under the KTRS, and thus violates the provisions of KRS 161.714, which establishes the inviolable contract.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andy Beshear", written in a cursive style.

ANDY BESHEAR
ATTORNEY GENERAL